

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VICTOR P. LASKORSKI

Appeal No. 2006-0047
Application 10/039,511

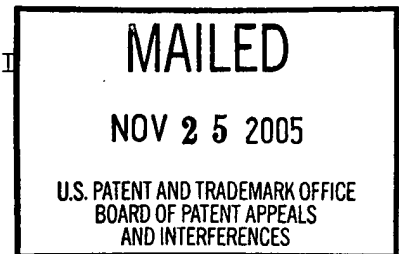
ON BRIEF

Before KIMLIN, OWENS, and FRANKLIN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2 and 5-15. Claims 3 and 4 have been objected to by the examiner. Claim 1 is illustrative:



1. An insulation material comprising:

a first layer of material of somewhat uniform thickness;

a second layer of material of somewhat uniform thickness for positioning over said first layer;

inserts for insertion between said first layer and said second layer, said inserts being compressible and having interior voids, and said layers being in contact with each other along one or more portions thereof where the inserts are not located; and

means for affixing said first layer and said second layer together whilst securing the inserts therebetween.

The examiner relies upon the following reference in the rejection of the appealed claims:

Curro et al. (Curro) US 2002/0164465 Nov. 7, 2002

Appellant's claimed invention is directed to an insulation material comprising first and second layers of uniform thickness having compressible inserts positioned between the layers. The first and second layers are in contact with, and affixed to, each other in areas where the inserts are not located. According to the present specification, the claimed insulation material finds utility "in sleeping bags and other similar materials" (page 1, line 5).

Appealed claims 1, 2, 5-7 and 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Curro. Claims 8-10 and 12-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Curro.¹

Appellant submits at page 5 of the principal brief that "[f]or purposes of this appeal, claims 1, 2, and 5-14 constitute one group and stand or fall together." Accordingly, since appellant has not set forth a substantive argument that addresses the examiner's rationale for the Section 103 rejection of claims 8-10 and 12-14, all the appealed claims stand or fall together with claim 1, and we will limit our consideration to the examiner's Section 102 rejection of claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the applied reference describes the claimed subject matter within the meaning of Section 102. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

¹ The examiner has withdrawn the Section 102 rejection of claims 1 and 2 over Hoyt.

Appellant does not dispute that Curro describes a material comprising the claimed structure, namely, first and second layers of material of somewhat uniform thickness, compressible inserts having interior voids for insertion between the first and second layers, and the layers being in contact with, and affixed to, each other in areas where the inserts are not located. Rather, it is appellant's contention that "Curro's laminate web is not insulation material" (page 6 of principal brief, second paragraph). Appellant maintains that the laminate of Curro "is a clean room wipe, tack cloth, decorative covering, or a food pad" (*id.*). However, as pointed out by the examiner, Curro also discloses that the "laminate can be used in bedding applications as blankets, as fabrics for clothing, etc." (page 4 of answer, first paragraph). Accordingly, since Curro, like appellant, teaches that the first and second layers are non-woven materials, and the inserts are elastomeric, expanded material, and Curro also teaches that the laminate may be used as fabrics for clothing and bedding applications, as well as for towels, sheets, pillow cases and placemats, we fully concur with the examiner that the laminate of Curro qualifies as an insulation material. It is

not seen how appellant's disclosed use for sleeping bags and other similar items is substantially different than the uses of Curro's laminate.

We also agree with the examiner that "any article, such as those disclosed in the reference, possesses insulating properties to a degree, whether they be heat, sound, electrical, etc. insulating properties" (page 4 of answer, first paragraph). Claim 1 on appeal is sufficiently broad to encompass any of the insulation properties enumerated by the examiner and fails to define any specific degree of insulation. Manifestly, it is well known to use a dish towel, or any towel, as an insulation material while handling hot cooking ware.

Appellant also submits that "Curro's laminate web is said to be conductive (paragraph 151, page 15) and is, therefore, by definition not an insulation material" (page 6 of principal brief, second paragraph). First, the conductive fabric disclosed by Curro is only one of several embodiments, many of which are not conductive, e.g., those having a central layer 30 of foam. Secondly, as pointed out by the examiner, a material may be electrically conductive while thermally insulating. Furthermore, it would appear that the reference embodiment comprising a conductive fabric also qualifies as an insulation material, inasmuch as the central layer of the

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laminate is conductive whereas "the outer layers should serve to insulate the conductive central layer(s)" (paragraph 0071, emphasis added).

As for the examiner's Section 103 rejection of claims 8-10 and 12-14 over Curro, appellant does not address the examiner's reasoning that it would have been obvious for one of ordinary skill in the art to use "three or more central layers in the article of the reference depending on the end use of the article" (page 3 of answer, second paragraph).

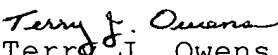
In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

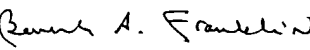
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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.36(a)(iv) (effective Sept. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sept, 7, 2004)).

AFFIRMED


Edward C. Kimlin)
Administrative Patent Judge)


Terry J. Owens)
Administrative Patent Judge)


Beverly A. Franklin)
Administrative Patent Judge)

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